(57) (58) (57)

A.F.R.

HIIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION NO. 1926 OF 2003

PETITIONER : Dr. Sanjeev Kumar Agarwal
S/o Dr. Ramesh Prasad Agarwal
Aged about 37 years, R/o Baniapara
Dhamdha, Distt. Durg (C.G.).

-Versus-

RESPONDENTS :

1. State of Chhattisgarh,
Through Secretary,
Department of Public Health & Family
Welfare & Medical Education, D.K.S.
Bhawan, Mantralay, Distt. Raipur.

2. Director Medical Education, Govt.
Of Chhattisgarh, D.K.S. Bhawan
Raipur, (C.G.).

3. Dean, Jawahar Lal Nehru, Medical
College, Raipur (C.G.)

4. Director, Health & Services, Govt.
Of Chhattisgarh, D.K.S. Bhawan
Raipur, (C.G.)

5. Medical Council of India, Aiwan-
E-Galib Marg, Kotla Road, New
Delhi-110002.

POST FOR ORDER ON 18th August, 2003.

Sd/-
L.C.BHADOO
Judge

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Shri B.P. Mishra, Counsel for the petitioner.

Shri Sanjay K. Agrawal, Deputy A. G. for the State/respondents.

ORDER

(Passed on 8th August, 2003)

By Justice L. C. Bhadoo.

1. The petitioner who is a student of postgraduate Medical course (Anaesthesia) of Medical College, Raipur and pursuing his post graduation studies in that college has preferred this writ petition under Article 226/227 of the Constitution of India seeking direction that to direct the respondents to give admission to the petitioner in MS (General Surgery) against a seat which is lying vacant since beginning.

2. The petitioner's petition is that the respondent No.1 State of Chhattisgarh made Chhattisgarh Medical Snatkottar Pravesh Pariksha Niyam 2002. The said rules came into force on 15-5-2002 and the aims and objects of making the Pre-P.G. Rules 2002 were to fill the State quota seats through the State Pre-P.G. Examination.

3. The Pre-P.G. Rules laid down the specific eligibility criteria as mentioned in clause-6 thereof which a candidate is required to fulfill seeking admission to post graduate courses. The petitioner fulfilled all the criteria fixed under the Pre-P.G. Rules 2002 and that in response to the advertisement published in Hindi Daily 'Danik Bhaskar' dated 4th June 2002 applied in the prescribed manner for appearing in the Pre-P.G. test to be conducted by the Pt. Ravishankar Shukla University, Raipur and he was issued admission card by the university and he appeared in the entrance test conducted on 10-7-2002. The petitioner was declared successful and he secured 10th position in order of merit. Copy of the result is Annexure-P/4.

4. On 24-2-2003 the process of counseling was commenced by the respondents for admission to MD/MS and Diploma Courses 2002 and the candidates who had passed the Pre-P.G. test were called for counseling on 26-2-2003. The procedure of counseling followed by the respondents was that they displayed on the blackboard the number of postgraduate degree seats available against each course/subject and called the candidates one by one as per the list Annexure-P/4 and asked them to choose one available course/subject. The candidates appeared before the committee and indicated their individual choice for the course/subject and the available seats were thus sought to be filled up.

5. The petitioner was interested to exercise his option for MS (General Surgery) course. But he being at S.No. 10 in the order of

merit and by the time his turn came, the seats for M.S. (General Surgery) were declared filled up as one Dr. Mukesh Kumar Tiwari who was at S. No. 2 had opted for the same, then the petitioner gave his choice for MD course in Anaesthesia. The testimonials of the candidates were scrutinized by the committee after the provisional allotment of seats as stated above and at this stage it was found by the committee verifying the certificates that Dr. Mukesh Kumar Tiwari at S.No.2 in the list who had opted for M.S. (General Surgery) course was not eligible because his certificates were not in order and therefore, finally he was not admitted to the said P.G. course. Thus the seat for M.S. (General Surgery) remained vacant and has not been filled till date.

6. The above situation arose due to improper procedure adopted by the respondents in counseling. Had the certificates been scrutinized first before allotting the seat, as contemplated in Pre-P.G. Rules 2002, the seat for M.S. (General Surgery) would not have been wrongly provisionally allotted to Dr. Mukesh Kumar Tiwari and the petitioner would have got the said seat.

7. The petitioner on coming to know that the seat for M.S. (General Surgery) is still vacant submitted his application to the Dean, Pt. Jawaharlal Nehru Medical College, Raipur with copies thereof to the Govt. of Chhattisgarh and also Director Medical Education for the allotment of the said seat to him. Copy of the application is annexure-P/6.

8. The petitioner is pursuing his studies in M.D. Course (Anaesthesia), but he is still desirous of the seat for M.S. (General Surgery) especially because a seat is vacant and if not allotted, will go waste.

9. The seat is lying vacant since 17-3-2003 and it is more than 3 months the respondents' decision thereon is still awaited. It is reliably learnt that the respondents are not inclined to allot the seat in question to the petitioner although there is no any rational

reason for it. The only reason which is remotely understood is that the seat once allotted cannot be changed which cannot by any process of reasoning be said to be good and sound ground for refusal.

10. Therefore, the petitioner prays the Court that the respondents be directed by issue of writ of mandamus or certiorari to allot the seat for M.S.(General Surgery) course to him.

11. Return on behalf of the respondents 1 to 4 has been filed in which it has been mentioned that the petitioner was qualified for Pre-P.G. examination and has been given admission in M.D. (Anaesthesia). The admission in the postgraduate courses are governed by the rules known as Chhattisgarh Medical Snatkottar Pravesh Pariksha Niyam 2002. Copy of the rule is filed herewith as Annexure-R-1(A). Rule 10.13 of the said rules envisages that every candidate will be allowed to choose one available course in subject during the counseling for the session for which Pre-P.G. Examination is conducted. Rule 10.15 envisages that if any seat remains or falls vacant in any subject the same would be filled up from waiting list strictly in order of merit by subsequent counseling in the same manner as mentioned above. It also says that while filling up such vacant seats, candidates already admitted to any subject will not be considered. Rule 11.31 further lays down that a candidate so admitted will not be entitled to seek a change of subject/course later on, "on any ground". No request for change of subject will be entertained and a candidate shall give an undertaking that he/she shall not make any application, representation for change of subject/course so allotted/assigned to him or her. However, change from Diploma Course to Degree Course in the same subject is permissible.

12. The answering respondents submit that the rules framed for admission in Pre-P.G. courses and also the rules regarding the

change of subject is very clear and specific. Thus, by force of rule, a candidate so admitted is not entitled to seek a change of the course/subject later on, on any ground and accordingly the petitioner is also not entitled to change of subject as he has already and admittedly been admitted in M.D. (Anaesthesia) course and is prosecuting his studies and non consideration/rejection of the petitioner's case for change of the subject is based strictly in accordance with rules and law as the petitioner has not challenged the legality and validity of the rules in force and, therefore, the answering respondents submits that the rejection/non-consideration of the petitioner's case for a seat in M.S. (General Surgery) cannot be faulted with and the said petition deserves to be rejected.

13. I have heard Shri B.P. Mishra, counsel for the petitioner and Shri Sanjay K. Agrawal, Deputy Advocate General for the State/respondents.

14. Counsel for the petitioner Mr. B.P. Mishra argued that at the time of the counseling incorrect and wrong procedure was adopted by the admission committee. In the first instance the admission committee ought to have checked the eligibility of the candidates after scrutinizing their testimonials. Had the committee opted this procedure then there was no chance of any mistake. But, instead of this, the committee started the counseling without scrutinizing the testimonials and the seat of M.S.(General Surgery) was allocated to one Dr. M.K. Tiwari and later on when after allotting the seat to all the candidates the testimonials were scrutinized by the committee then they found that Dr. M.K. Tiwari was not eligible. Accordingly, his admission was cancelled and he was not allowed to take admission and that one seat of M.S. (General Surgery) fell vacant. He further submitted that this mistake crept in on account of the incorrect procedure adopted by the respondents. He further submitted that the petitioner was at

S.No. 10 in the merit list and since student Nos. 2 and 3 at the merit list opted for General Surgery and there were two seats for General Surgery and no seat remained vacant for the petitioner and the student Nos. 4 to 9 in the merit list are not interested in M.S. (General Surgery), therefore, the respondents ought to have allotted the vacant seat to the petitioner.

15. On the contrary, Mr. Sanjay K. Agrawal, Deputy Advocate General argued that Pre-PG rules 2002 lays down that once seat allotted cannot be changed in any circumstance for whatever reason. Such seat can be filled up only as prescribed in the rules and can be filled up from the students among waiting list on the basis of merit list. Therefore, there is no substance in the petitioner's petition. He further submitted that the course has already commenced and by now more than 4 months have already been expired. Therefore, in the mid stream that too contrary to rules the petitioner cannot be allowed to take admission as per his choice and in support of his argument he placed reliance upon the decision of the Hon'ble Apex Court.

16. In the light of submissions made by the respective counsel, if we look at the rules, rule 10.15 lays down that if any seat remains or falls vacant in any subject the same would be filled up from the waiting list strictly in the order of merit by subsequent counseling (s) in the same manner as mentioned above. The dates of subsequent counseling (s) for the candidates in waiting list will be communicated to them by registered post and also displayed on the notice board of the office of the Director Medical Education. While filling up such vacant seats, candidates already admitted to any subject will not be considered and candidates in waiting list will only be considered till the closing date of 2nd July of the year of Pre-P.G. Examination.

17. Rule 11.3.1. further prescribes that a candidate so admitted will not be entitled to seek a change of subject/course later on any

ground. No request for change of subject shall be entertained. The candidate shall also give an undertaking that he/she shall not make any application, representation or petition for change of subject/course so allotted/assigned to him/her.

18. Therefore, a bare perusal of the rules 10.15 and 11.3.1. specifically laid down that once option is exercised and subject/course is allocated to the student that will not be changed on any ground and it has been further prescribed that if any seat falls vacant for any reason then that seat will be allocated to the candidates in waiting list strictly in order of merit by inviting them in subsequent counseling in the same manner as mentioned above.

19. In view of the specific provisions, I do not find any substance in the arguments of the learned counsel for the petitioner and in this connection the Hon'ble Apex Court in the matter of **Arvind Kumar Kankane Vs. State of U.P. and others** reported in **(2001) 8 Supreme Court Cases 355** held that

> " .....once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counseling and his seat becomes vacant, the process of counseling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period".

Similarly the Court negatived the grievances raised by the petitioner saying that:-

> ".....if a choice subject like Surgery and Medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student, who has been allotted a seat in Medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the Rule."

Similar arguments advanced before the Hon'ble Apex Court in the matter of **Shafali Nandwani Vs. State of Harayana and others** reported in **(2002) 8 Supreme Court Cases 152**, in paras 7 and 8 the Hon'ble Court negatived the arguments relying on the earlier decision in the case of **Arvind Kumar Kankane Vs. State of U.P. and others** and the Court observed that:-

> " Admission to postgraduate courses at belated stage granting respondent admission to the contested three-year postgraduate course when both respondent and appellant had already completed two-and-a-half years of their respective courses, held, would be improper since it would amount to colossal waste of effort and expenditure."

In the present case also more than 4 months have already elapsed. Again the Hon'ble Apex Court in the matter of **Medical Council of India Vs. Madhu Singh and others** reported in **(2002) 7 Supreme Court Cases 258** held that:-

> "Mid-sessions admissions cannot be permitted. Court should not direct such admission and time schedule should be fixed for duration of the course and period during which admission can take place."

(20) In view of the law laid down by the Hon'ble Apex Court in the above judgments, it is clear that mid-sessions admissions should always be avoided where the Rules prescribes that if any seat falls vacant then the waiting list candidates are to be allowed to take admission. But, the student who had already opted the subject/course should not be allowed to change his/her subject. In the present case also as per the Rules 10.15 and 11.3.1. no change can be allowed to the students who have already taken admissions on exercising their options. Moreover, there are candidates at S. No. 4-9 above the petitioner and without inviting them for counseling the petitioner cannot be given admission. Therefore, in any circumstance, the petitioner is not able to make out his case for exercise of extraordinary jurisdiction by this Court under Article 226 of the Constitution of India.

(21) This writ petition has no force, the same fails and it is dismissed.

(22) Cost is made easy.

Sd/-
L.C.BHADOO
Judge

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